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ABSTRACT

On the premise that the benefits of adventure education far outweigh risks in any well managed program, this document provides such programs, which stand on relatively untested ground in the eye of the law in this litigious society, with strategies for reduction of risk by controlling the nature and frequency of accidents. The first section outlines the law of liability related to the doctrine of governmental immunity and the concept of negligence. Section two applies risk management theory to six typical high risk activities (low and high ropes courses, canoeing, rock climbing, backpacking, and winter hiking and camping), illustrating responsibilities of program supervisors; principles of standard of care; and physiological, social-psychological, environmental, safety, and technical forces of concern. The next section cites recent Massachusetts cases illustrating governmental immunity, contributory negligence vs. assumption of risk, standard care required, trespassers, invitees vs. licensees, proximate cause, release forms, independent contractor liability, and hidden defects. The final section summarizes responsible features to incorporate into adventure programs: accident action procedures; general and specific supervision plans; lists of safety regulations; inservice education covering participant capabilities, first aid/emergency procedures, safety awareness, supervisory qualities, and technical skill maintenance; facility and equipment inspection and maintenance; public relations programs; and communication with lawyers and insurance agents about program activities and safety procedures. (NEC)

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TORT LIABILITY AND RISK MANAGEMENT

in

ADVENTURE EDUCATION

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The field of adventure education, inspired by the successful transplanting of the English Outward Bound School to America in 1962[1], has come into its own in the last dozen or so years. Its documented effects on self-concept, social skills, and confidence are alone sufficient evidence to support both the continuation and expansion of these programs. But an even stronger defense is the opportunity for an individual to take risks and test himself in a world that all too freely sets false limits and takes away the spirit of adventure with unrelenting predictability. As technology adds insulation between the human being and his environment, it is essential that avenues for direct contact between the two are conscientiously maintained.

Czikszentmihalyi describes an activity that allows an individual to attain a peak moment in his life a "flow experience".[2] It is then that the individual's total capacity is in concert with the demands of the activity itself. This, then, leads to the only true enjoyment one can achieve. Adventure education is a carefully designed program seeking to take individuals to this flow experience and apply what is accomplished to his everyday life challenges.

In this day and age of law suits brought to court at the drop of a hat, many schools and youth agencies have hesitated in employing what are viewed as "high risk" programs. With few specific court cases to go by and no certification of instructor training (certain local certifying agencies are beginning to emerge), agencies are not sure where they stand in the eye of the law. Drawing on traditional risk management theory, the agencies are faced with four alternatives:[3]

1) Avoidance of the activity altogether
2) Financial risk management
   a. Transference through insurance
   b. Assessment of insurance cost by adding to user fees
3) Retention of risk
   a. Maintenance of "in-house" funds to cover accidents
4) Reduction of risk
   a. Control of the nature and frequency of accidents

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Although most agencies are employing some sort of liability insurance to cover indemnification of employees, this paper is concerned only with the fourth strategy-controlling the risk factor directly. The benefits of adventure education so far outweigh any risk in a well managed program, that to abandon its inception for that reason alone is inconscionable. And whether an in-house plan or comprehensive liability insurance through a private carrier is more feasible goes beyond the scope of this report.

THE LAW OF LIABILITY

Doctrine of Governmental Immunity

This doctrine grew out of old English law originally placing all corporate entities above liability in law suits because of the difficulty in securing technical evidence.[4] As the law evolved, the protection from the law in America was limited to governments, municipalities, and schools (considered government agencies). This was defended by Justice Holmes in a monumental case,"...on the logical and practical ground that there can be no legal rights against the authority that makes the law on which the right depends."[5]

The doctrine has always been challenged and was by no means ever a blanket immunity. As of 1968, 39 states still adhered to some aspect of governmental immunity, but only 16 provided no remedy to the plaintiff for negligent acts of schools or municipalities and their employees.[6]

The trend in recent cases is to "pierce the veil" of the governmental immunity and award remuneration according to actual negligence. Thus, whether the program is operated in conjunction with a school, park and recreation department, or governmental agency, the policies outlined in section two of this paper should be implemented.

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The Concept of Negligence

There are three basic types of liability recognized by the court system:[7]

1) Criminal liability is an act by an individual against the laws of society. Examples are rape, murder, and burglary.

2) Contractual liability is concerned with a single, specific arrangement between two parties, such as the sale of a product.

3) Tort liability is the concern of this paper. It constitutes a wide range of unreasonable interferences with the best interest of other parties. Compensation for loss is the determination sought by the plaintiff in such cases.

Within the area of tort liability is the concept of negligence, the basis for virtually all actions brought against agencies that operate or intend to operate adventure programs. The concept of negligence is broad and complex, but the following will serve as a preliminary definition. "Negligence is an unintentional breach of a legal duty causing damage reasonably foreseeable without which breach the damage would not have occurred."[8]

Negligence is based on the fact that the defendant owed a duty to the injured party, a duty owed privately as opposed to a responsibility to the general public.[9] In the operation of an adventure program there can be three separate types of duty owed according to the relationship of the individual to the program:

1) Invitees would represent the actual students in the program, and to them is owed the greatest duty by the landowner, supervisors, and instructors. They are on the property because of the program itself and are therefore placing implicit trust in the aforementioned that their safety is of paramount concern.

In the case of low ropes course apparatus that is left accessible after program hours, if the area is an open playground, then children using the apparatus are still considered invitees. However, the owner is not responsible for injury except that caused by faulty or unreasonably dangerous equipment.[10]

2) A student becomes a licensee in regards to a landowner when he engages in some sort of activity on his property with the landowner's consent. It is assumed the landowner is not changing a fee for this use, and the activity is supervised

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by a third party. Duty owed here to the individual is limited to:[11]

I) Be aware of his presence and avoid injuring him while engaged in activity on the land.

II) To warn him of any unexpected peril or changes in the premises which might endanger him.

An example of a licensee would be a group of students camping on private land with the owner's consent.

3) A trespasser is owed no duty except to protect young children who are not-restricted from the area from any hidden perils.[12] A case where a child wandered across a low ropes course area, clearly marked with "NO Trespassing" signs, could only be pressed if the child fell into an unreasonably dangerous hazard, such as a log improperly lashed overhead falling on the child.

Traditionally the defendant in a tort liability suit brought against a school or municipality for negligence was the corporate or organizational board itself.[13] Now, however, suits name most of the parties involved, whether school boards, supervisors, or direct service personnel. Each level of the hierarchy is assigned certain stated or implied duties owed to the plaintiff. Thus, a "class action" suit will attempt to discover at what position in the chain the act of negligence occurred.

The corporate board (school board, municipal council, recreation and park board, or camp governing board) usually has a specific set of statutory responsibilities to the public. They include establishment of rules and regulations for conducting various activities, safe maintenance of facilities, hiring of competent staff, and provisions of adequate supervision.[14] In addition there are two legal precedents which may increase the liability exposure of the board. The doctrine of respondent superior, not recognized in states that provide governmental immunity, states that any liability of an employee (paid or volunteer),

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acting within the bounds of his authority, is formerly passed on to the board.[15] And in some states school boards are required by statute to indemnify the employee for costs and judgments brought against the board, but financially the result is the same. Board members are only liable individually when they overstep the statutory bounds of their charter.[17]

Specific responsibilities of the program supervisor would include: 1) employing and upgrading competent personnel, 2) directing services in an appropriate manner, 3) fulfilling statutory requirements and providing rules and regulations for participant safety, and 4) eliminating dangerous conditions (about which he is aware) and maintaining the condition of program equipment.[18] It is also crucial that the supervisor draw up and adhere to a strict, detailed plan for supervision.

In adventure education accidents, it is typically the direct service personnel, the instructors, at whom the finger of accusation is initially pointed. They are on the spot (supposedly) and therefore maintain the most immediate control over the participant's safety. They are, however, often passed over in a suit either because of the aforementioned doctrines or because their ability to reimburse the plaintiff is limited. (The introduction of personal liability insurance through professional organizations is making it more attractive, as settlements with insurance companies can be quite lucrative.) A great deal of responsibility is levied on the instructor, again whether or not he is paid or volunteering being no issue. These duties owed will be discussed at length in the second section of this paper.

In most cases, the private landowner faces only limited liability. The key responsibility is to warn the participants against ultra-hazardous conditions on the property and to promptly repair or rectify any such situations. Forty-four states have laws which specifically limit landowners' liability to those mentioned <u>if</u> no fee is charged for land use.[19]

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When the relationship becomes a lessor-lessee arrangement, the owner takes on a greater responsibility for the maintenance of certain services specified in the lease. He is required to maintain facilities in the condition agreed upon in the contract. He is not, however, liable for the program activities conducted by the lessee over which he has no control. This liability falls on the program administration and direct service personnel.

One further group can be named in a tort liability action - the independent contractor. The exposure of this group to liability is dependent upon the relationship of the contractor to the program itself. For instance, white-water rafting guide service would be treated as an employee of the program when being paid to provide a river running experience. On the other hand, a manufacturer of a facility or activity structure might be named in a product liability suit. In this case everyone from the salesman to the instructor purchasing the equipment could be named as co-defendants.

To conclude this section it will be remembered that the intent of any tort liability suit is to prove negligence on the part of someone involved in the provision of a program activity which causes injury to the plaintiff. There are two types of negligent acts recognized by the court, commission and omission. Omission is a situation in which something should have been done and wasn't. Commission arises where something was done, but was done improperly. If either one of these charges can be substantiated, some sort of satisfaction will be awarded to the plaintiff. The determination of the case is a scrupulous comparison of each individual's assumed or statutory responsibility against the actual standard of care provided.

APPLICATION OF RISK MANAGEMENT THEORY TO SIX ADVENTURE ACTIVITIES

This section will utilize six typical high risk activities to illustrate the

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practical principles upon which the determination of negligence is based. The activities are:

Low ropes courses
High ropes courses
Canoeing
Rock climbing
Backpacking
Winter hiking and camping

The implication is not that any particular activity is of a higher or lower degree of risk to the participant. In fact, how one participant views the danger involved in a given activity will be quite different from someone else's, and that perception may be of more importance to the program's success than the actual statistical risk.[20] The activities are merely mentioned to allow application of the appropriate principles to a hypothetical program.

The first three activities will demonstrate the principles of standard of care. A cursory review of typical cases involving municipalities, schools, and park negligence will be sufficient to realize that this doctrine is implied more frequently in the decision language than any other.[21] Van der Smissen divides the rather large issue of standard of care into three separate sub groups - supervision, conduct of activity, and environmental conditions. A duty is owed to the participant by the program staff, not to be the ultimate insurer of safety, but to remove any unreasonable risk of harm. Failure to do so is usually related to one of these three concepts.

A high ropes course activity should be a carefully controlled, extremely safe opportunity for a participant to explore his limits of confidence and courage. It can also be the vehicle for a tragic act of negligence. One aspect upon which the alternatives pivot is supervision. It has already been pointed out that one job of the supervisor (program director) is to create a plan for supervision and

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abide by it. This might involve posting rules and regulations on the ropes course premises, specifying how many instructors and of what qualifications should be attendant to the activity, what type of student preparations are adequate, etc. Unless these guidelines are clearly presented to the instructors, supervisory personnel may be negligent.

Negligence through supervision can arise in one of three ways - the nature of the supervision, the location of the supervisor, or the competency and adequacy of the supervisors.[22] Implicit in the nature of supervision is the enforcement of rules and regulations as well as controlling rowdy behavior. Foreseeable risks should be explained to the participants. Defective equipment should be repaired or replaced. The principle also assumes that more dangerous activities, such as a Zipwire, require a higher degree of supervision.[23]

It is negligent to allow a beginner to change his own belay system from one activity to another without direct supervision. This would be improper location of the supervision. On the other hand, moving from a rope ladder to another activity without having to change the belay is reasonably done with only verbal contact between instructor and participant. In other words some activities, because of the risk involved must be "specifically" supervised, whereas other low risk activities require only "general" supervision.

The competency of supervisors will be discussed later. The number required by a particular activity is dependent again on the specific or general need for supervision. Many programs attempt to operate a high ropes course with only one instructor. This makes it impossible to directly supervise belay transfers in the trees while providing the ground belay at the same time. The appropriate number of instructors relates to the age and experience of the participants, as well as the actual number of people in the group. A common mistake of supervisors is to place too much responsibility for safe belaying in the hands of inexperienced

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participants or chaperones. Unless the person claims prior expertise, the supervisor is negligent if an act of the participant causes injury to another resulting from his inadequate training.

Many points of argument concerning the actual conduct of the activity can be illustrated by a simple canoeing activity. The first consideration relates to the age, skill, and size appropriateness of the participants. Negligence can and will be maintained wherever poor judgment is used in placing the wrong individual in the wrong level of activity challenge. A classic example is a Boston University graduate student who led a beginning white-water canoeing workshop several years ago. With no flatwater practice of strokes or emergency procedures, the students (all adults) were launched in open canoes into class III-IV rapids, a rating requiring expert skill. Several boats were immediately swamped and equipment lost. Fortunately, no injury resulted, or a strong case surely would have been pressed. On the other hand canoeing can be safely conducted at virtually any age and skill level if the capabilities of the participants are considered.

Another concurrent requirement is for the proper instruction in technique prior to the activity. In the above case had the students been given flatwater instruction and lower level river practice, the risk involved would have been greatly reduced.

Proper safety equipment is imperative. If one is simply paddling a slow, shallow river with participants who have proven swimming ability, no safety gear is necessary. However, on larger, deeper bodies of water life jackets and flotation devices attached to the canoes are called for. And, in white-water rapids where rocks are prevalent, a safety helmet is mandatory. In all cases supervisory judgment must be made as to perceived hazards.

The final and perhaps most important point in the conduct of the activity is establishment and adherence to rules. Rules outline appropriate conduct of the participants that will provide a safe environment. If rules are not specific, the

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participant is technically ignorant of the dangers involved in inappropriate behavior. If the regulations are made clear, the person is contributorily negligent should he choose to ignore them, and this can be a very strong defense against tort liability.[24] It is for this reason that a release form should be signed by all participants pledging to follow rules and regulations of the program.

Environmental conditions cover several aspects of the standard of care delivery. As mentioned in the first section, one of the few responsibilities of the landowner is to make the participants aware of any hidden perils. Let us assume a school has a low ropes course facility on which there is an activity requiring the group to construct a rustic bridge over a shallow abyss, using only a few short poles and a length of rope. Were this bridge to be left in place after the activity and a small child decided to play on it after the program hours, the supervisor and/or landowner could be named negligent if the bridge collapsed. The supervisor should have removed or disassembled the structure to reveal the danger more clearly, and the landowner should have protected the small child from the abyss by a fence or other warning.

Ordinarily, a low ropes course can be considered a playground facility, and unless there are hidden perils, the attractive nuisance doctrine does not apply. Two steps can be taken to reduce any exposure at all. 1) The area should be clearly marked with "No Trespassing" signs to discourage unauthorized use, and 2) any inordinately dangerous activities (fidget ladders, etc.) should be removed when not being used. Anything left unattended should be reasonably safe to play on.

Obviously, all equipment should be regularly and carefully inspected by competent persons to determine wear and tear. Any dangerously worn equipment - ropes, cables, rotted logs, etc. - should be replaced or removed.

If the course is used by groups other than the principle owners, the owners themselves are liable for accidents arising from the conditions of the equipment when the visiting group is using it.[25] Use of one facility by several groups must

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be carefully regulated to determine equipment condition before and after each group uses the area.

A winter camping program involving cross-country skiing, snowshoeing, ice climbing, or other similar activities demands a high degree of preparation and judgment in the area of medical considerations. This responsibility is shared by all three levels of program management, i.e. the board (provision of adequate supervision and regulations), the supervisor (hiring and training of competent instructors), and the instructors themselves (conduct activities and leadership decisions). Because of the strenuous nature of the activities and the unpredictability of weather factors, risk management is extremely important in fulfilling these and other duties owed.

A second important reason for requiring signed release forms from participants (the first was to specify obedience to rules and regulations) is to clearly state the physical and emotional demands of the activity. In 1975, an instructor at the National Outdoor Leadership School and the governing board were named in a civil action because the plaintiff didn't realize he would be required to carry a pack weighing 50-65 pounds through rugged mountain terrain. The successful defense hinged on explicit cautions in the course catalog as well as the application form itself, signed by the plaintiff.

Any program using "high risk" or physically demanding activities should require a recent physical from each participant. All past weaknesses, injuries, and allergies should be noted and a record carried by the instructors in the field. Winter programs should note cases of frostbite and hypothermia, as these injuries occur more readily after initial episodes.

The vast majority of decisions in accidents which are based on medical considerations concern improper or inadequate first aid treatment. Obviously, all direct service personnel must have current, formal first aid training. This does

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not insure proper action, but demonstrates the efforts on the part of the supervisor to provide competent instruction. Negligence will be determined against the supervisor if inadequate training is required of the instructors. On the other hand, the instructors will be held to an imaginary standard of care responsibility based on the skill levels for their first aid ratings. The following report system will minimize exposure to liability in the case of an accident.[26]

1) Name and address of accident victim (parents)
2) Names of several witnesses.
3) The sequence of the activities.
4) Location of leaders in relation to the accident scene.
5) What happened? Who was involved? What was going on?
6) What could the victim have done to prevent the accident?
7) What rules and regulations (if any) were violated?
8) Careful outline of first aid procedures planned.

In the case of a winter camping accident occurring far from medical help, the plan for further care of the victim and evacuation procedures should follow. Location of the main group, the route of the evacuation team, and the phone numbers of rescue authorities to call when the team reaches the roadhead should be listed and duplicated. One copy goes with the evacuation team, and one stays with the instructor. Condition of the victim should be recorded every 30 minutes to give the attending physician a clear picture of progress or deterioration.

If cautious, standard care procedures are applied to accident situations, no liability for the medical aspect at least should be upheld. Of course, if the accident were preventable through application of some other legal principle, a separate action might ensue. Medical forms prior to participation, proper training in first aid of the instructors, and reasonable, documented action in

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an emergency are all that the law requires as proper standard of care.

A minor, but potentially important point is the type of transportation provided for a hypothetical backpacking trip. Students could be transported in one of four ways - school bus, school car, personal car of instructor, or private autos of students or parents.

In the case of the school bus, if it is owned by the school district or a leasing agency, the laws for its operation and liability are controlled by the state or the leasing arrangement. A private bus owner is covered by the laws of common carriers. It is imperative that any of these buses used be covered by insurance and, in this instance as well as in all the others, motor vehicle laws must be obeyed or the driver can be brought into a criminal action.[27]

If a school car is used, the purpose must be within the scope of its chartered arrangements. The driver must be authorized and obey the motor vehicle laws. If the leader (driver) acts beyond the scope of his duty, he can be held liable.

Use of a personal auto, if properly insured, is legitimate if used within the scope of the program directions. Liability for an accident falls upon the driver (owner) of the car and his insurance company. Thus, it is important that his insurance cover such a situation. Often, if a fee is charged for the service, the insurance company will disallow any reimbursement.

If the auto is owned by a parent or student, they again must assume the responsibility and should be fully insured for such situations. Let's assume that student cars are being used to drive to an overnight hiking spot, and four hiker/students are injured in an accident involving a jalopy in which they are riding. If the court can be persuaded that there was reasonable doubt about the safety of the vehicle, the school or organization can be sued for negligence owing to poor judgment in using that particular car.[28] Careful consideration must, therefore, be used in allowing particular drivers and vehicles

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to be used for program transportation.

The last activity component to be analyzed is perhaps the most critical. The instructors are the most immediate link between program safety and the participant. It is upon their judgment and leadership that the chance and frequency of accidents most often rests.

Robert Rogers has identified five separate areas of expertise upon which the quality of instructors can be evaluated.[29] They can also serve as guidelines for inservice training and certification in some instances. The law states that whether or not the instructor is paid for his services, it is assumed that by virtue of his relationship to the students he is knowledgeable beyond that of an average person in the field he is teaching. If he is judged unqualified in this regard by the court, his supervisor will be negligent. If he is capable of foreseeing the accident and didn't, then the instructor himself will be guilty of misfeasance (wrong action) or non-feasance (inaction).

The following discussion will highlight Roger's five forces of concern while using a hypothetical rock climbing program for demonstration purposes. The standards suggested here are quite high, but a court of law might pinpoint any of the areas lacking in the instructor's training if that lack can be considered approximate cause of the accident.

The first area is physiological factors, including how the body adapts to stress, effects of disruption of vital systems, first aid procedures, and general fitness. Rock climbing demands an unusually high degree of physical exertion and, because of the added stress involved, the body reacts dramatically to the harsh environment. An experienced climber learns to control his heart beat and breathing through concentration and relaxation. He also moves smoothly and effortlessly to conserve energy. A beginner is new to all these techniques, and it is the responsibility of the instructor to prepare the student for these foreseeable demands and to coach him through them. A proper program of

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pre-course strengthening and movement skills is helpful, and the usual medical form and physical should be mandatory.

Instructors must be aware of social-psychological factors among group members. Sub-topics of knowledge in the areas of human behavior, group dynamics, and valuing are key elements in preparedness to response to stimuli. Climbing creates stress both on the individual and the group, especially during on emergency, when everyone must respond. Each student must be evaluated individually as to how much stress he can handle positively, and thus how far he should be pushed. Not enough research has been done on the psychological risks of stress and challenge, but what is strong enough to help is strong enough to hurt.[30]

Knowledge of environmental forces is becoming more necessary each year. With increased use of our public and private recreation areas, each person's impact must be minimized to prevent rapid depletion of resources. A thorough knowledge of ecology and a conscientious environmental ethic is required of instructors, and they should set aside time to pass these standards on to the students. Twenty years ago climbers hammered steel nails, called pitons, into the cracks in the rock for protection. They were very secure, but presented one of two problems. If the pitons were left permanently in the rock, they represented a form of litter and provided an unfair marking of the route to be climbed. If they were removed, the pounding in and out changed the size and character of the crack, directly altering the natural environment. Today's "clean climbing" techniques utilize pieces of metal simply placed in tapering cracks to wedge there in case of a fall. If properly placed, no alternation is made to the rock, and hundreds of climbers can ascend the same route with little impact. Other ecological forces about which an instructor should be aware are compaction of soil at the base and top of cliffs, scraping lichens from the rock face, and breaking of delicate plant growth on ledges.

Safety forces are numerous and demand the greatest level of judgment from the

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judgment from the instructor. He must have first aid training and know how to react during a medical emergency. He must be conscious of group security and be clear about the rules of the program. For instance, he should keep the people who aren't climbing away from the edge of the cliff and out of the path of falling rocks if they're standing below the climb. He must warn students of slippery conditions and point out proper descent paths that are safe and away from danger. Specific dangers, such as grabbing roots or shrubs while climbing, should be outline. And if an accident occurs on the rock face itself, the instructor must be prepared to plan and implement cliff rescue procedures.

The fifth category is technical forces. The nature of these skills depends on the type of activity. Some of them are generally required for program leadership, i.e. program planning, group responsibilities, personal and group equipment, and legal liabilities. A good overall knowledge of these forces is mandatory. In addition, certain specific skills are required during certain activities. A climbing instructor must firstly be a good rock climber; he cannot teach what he doesn't know. He must have a thorough understanding of anchors, safety belay systems, and the forces involved in a falling body. If the program takes place away from civilization, wilderness skills, navigation skills, expedition planning and group travel techniques will also be concerns assumed to be known by the instructor.

RECENT MASSACHUSETTS CASES: CLARIFICATION OF ISSUES

A very illuminating point concerning adventure education in the schools, towns, and camps of this state is that as of yet no cases concerning negligence have been brought to bear involving these "high risk" activities. This may represent the care taken by supervisors and instructors to insure safety in the programs. But it may also suggest a hesitance on plaintiff's part to sue govern-

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ment entities or a willingness to give up their rights to sue because of signed release forms. There is no indication either of how many potential suits have been settled out of court. Whatever the reasons are, the track record is good, and by exercising a high standard of care, program administrators can continue to provide safe, controlled challenge education.

The following points are taken from recent Massachusetts cases, and they add important highlights to the aforementioned principles. The cases are organized according to particular aspects of the law, some of which have already been described; others are presented here for the first time.

Governmental Immunity - Schools retain the same governmental immunity as municipalities. School officers (teachers) are held liable only for acts of malfeasance while performing their duty. Schools can still indemnify actions against teachers for malfeasance through insurance without giving up their governmental immunity. (Desmarais vs. Wachusett Regional School District - Mass. 1971)

Contributory Negligence vs. Assumption of Risk - "Contributory negligence" is action on the part of the plaintiff that is below the standard of care he should provide himself. It is negligence on his part that is proximate cause of the injury. "Assumption of risk", on the other hand, is the knowledgeable participation of a person in an activity in which he is completely informed and comprehends the risk involved. The difference here is that assumption of risk is a subjective concept depending upon the ability of the student to comprehend the actual risk. Hidden dangers are an example of a situation not covered by assumption.

In a recent case (Everett vs. Ricky Warren, Inc. Mass. 1978), a manufacturer of a three piece hockey helmet claimed a student who was injured when a puck entered a crack in the helmet had assumed a certain risk by playing hockey. The defense was rejected, however, on the grounds that the player was not aware of

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the specific weakness in the helmet, nor the fact that safer, one-piece helmets were available.

Standard of Care Required - In the same case listed above, the coach of the team was held negligent because, by virtue of his experience and knowledge, he was aware that safer helmets existed. Therefore, his judgment in purchasing the helmets was below the standard assumed by the vast experience of the person responsible. The court specifically assigned a higher standard of care to the coach than to an average person.

Trespassers - A trespasser who is injured because of his act of trespass cannot recover damages. (Pridgen vs. Boston Housing Authority - Mass. 1974) However, a landowner retains a responsibility to a child trespasser to eliminate hidden hazards. (Soule vs. Mass. Electric Co. - Mass. 1979)

Invitees vs. Licensees - In a 1973 court case, the distinction between invitees and licensees was abolished. The intent was to maintain the level of duty owed to the invitees and raise the level owed to licensees. Thus, landowners have a greater responsibility to a larger population of users. (Powers vs. Bethlehem Steel Corp.)

Proximate Cause - A defendant cannot be held liable unless injury was a foreseeable consequence (proximate cause) of the negligent act. The burden of proof rests with the plaintiff to show that the injury was caused by the negligent act itself. (Alholm vs. Town of Wareham - Mass. 1976)

Release Forms - Mere knowledge of the danger without full appreciation of the risk involved is not alone sufficient to preclude the plaintiff from recovery. (Tamer vs. Eliot Realty Corp. - Mass. 1976)

Independent Contractor Liability - An independent contractor can be held liable, even after a facility (i.e. ropes course) or product (canoe) is bought and paid for by owner, for injury to plaintiff, if the work was done with foreseeable knowledge that injury could result. (McDonough vs. Whaler - Mass. 1975)

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Hidden Defects - A landowner is liable for injury resulting from hidden defects on his property that a reasonable person would have discovered. He must, however, be given a reasonable amount of time to rectify the situation before plaintiff can recover. (Mass. 1975 case)

RISK MANAGEMENT: A SUMMATION

The preceeding discussion focused on the general principles of law governing the actions of schools, muncipalities, and other organizations who are providing or contemplating providing adventure programs to their clients. Because of the lack of specific cases related to risk programming, this is territory yet to be tested fully in the courts. However, the message this paper hopes to convey is that the law makes no distinction between one type of activity or another, so long as the same conscionable standard of care and injury preventions are employed. Administrators should be no more reluctant to provide challenging, adventure education than a football or swimming program. The following points should serve as a foundation for the safe initiation or continuation of any adventure program:[31]

1) Establish a procedure of action and communicaton during accident emergencies/Train all personnel in first aid.
2) Draw up a plan for supervision, both general and specific.
3) List all safety rules and regulations. SAFETY IS PARAMOUNT!
4) Provide inservice education to all personnel concerning:
   a. Developmental needs and capabilities of participants.
   b. First aid and emergency procedures..
   c. Safety awareness and procedures for all activities.
   d. How to supervise.
   e. Maintenance of technical skills.
5) Regular inspection of facilities, areas, and equipment as well as preventative maintenance and identification of hazards should be initiated.
6) Programs should incorporate:
   a. A progression of activities in accord with human development, skill, ex-

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perience, and disabilities.

b. Sufficient leadership and equipment.

c. Proper safety and instructional practices set forth by specialists.

7) A good public relations program is useful, involving school boards, parents, students, and other interested parties.

8) Contact with negligence lawyers and insurance agents is necessary to acquaint them with activities and corresponding safety procedures.

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FOOTNOTES

1. Colorado Outward Bound School, formed 1965
2. Csikszenmahalyi, Beyond Boredom and Anxiety
3. Betty Van der Smissen, "Legal Liabilities of Adventure Education," pp. 32-35
4. Ibid., p. 2
5. Kawanakoa vs. Polyblank, U.S. Supreme Court Case, 1907
6. Betty Van der Smissen, Legal Liability of Cities and Schools for Injuries in Recreation and Parks, p. 44
7. William L. Prosser, Handbook of the Law of Torts, p.8
8. 45 Corpus Juris 631
9. Piasecny v. Manchester, New Hampshire 1926
10. Ibid., Van der Smissen, p.56
11. Prosser, supra n. 1, p.445
12. Ibid., Van der Smissen, p.60
13. Ibid., Van der Smissen, p. 7
14. Ibid., Van der Smissen, pp.62-63
15. Gorsuch v. Springfield, Ohio 1945; Rook v. State, New York 1938
16. Ibid., Van der Smissen, p. 64
17. Norberg v. Nagna, South Dacota 1923
18. Ibid., Van der Smissen, p. 70
19. Ibid., Van der Smissen, p. 9
20. Stewart Allen and Joel F. Meier, "Let's Take a Risk with Adventure Recreation!", Parks and Recreation, Feb. 1982, p.48
21. Ibid., Van der Smissen, p.81
22. Ibid., Van der Smissen, p.193
23. Bucholz vs Sioux Falls, South Dacota 1958
24. Ibid., Van der Smissen, p.24
25. Dawson vs Tulare Union High School District, California 1929
26. Ibid., Van der Smissen, p.30
27. Ibid., Van der Smissen, p.233
28. Hanson vs Reedly Joint Union High School, California 1941
29. Robert J. Rogers, Leading to Share - Sharing to Lead
30. Gerald Fain
31. Ibid., Van der Smissen, pp. 34-35

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3. Rogers, Robert J. Leading to Share - Sharing to Lead. Council of Outdoor Educators of Ontario, 1979

4. West. Massachusetts Digest Annotated, Vol. 15a. West Publishing Company, St. Paul, Minnesota, 1981

5. Stewart Allen and Joel Meier. "Let's Take a Risk with Adventure Education". Parks and Recreation, February, 1982

6. Prosser, William L. Handbook of the Law of Torts. West Publishing Company, St. Paul, Minnesota

7. Czikszentmahalyi. Beyond Boredom and Anxiety. Jossey-Bass Publishers, San Francisco, California 1975

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